IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SONJOY SARMA, JM

ITA Nos. 989 & 1020/Coch/2024
Assessment Years: 2014-15 & 2018-19

Sud-Chemie India Pvt. Ltd. ..... Appellant
Edayar Industrial Area, Binanipuram, Aluva 683502
[PAN: AAACI3342E]

vs.

DCIT, Corporte Circle 2(1), Kochi ..... Respondent

Appellant by: Shri Radhesh Bhatt, CA
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 09.06.2025
Date of Pronouncement: 31.07.2025

O R D E R

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against different orders of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 08.10.2024 & 17.10.24 for Assessment Years (AY) 2014-15 and 2018-19, respectively.

2. Since identical issues and facts are involved in these appeals, they are heard together and disposed of by this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal bearing ITA No. 989/Coch/2024 for AY 2014-15 are stated herein.

4. Brief facts of the case are that the appellant is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacturing of industrial grade catalysts for petrochemicals, refineries, fertilizer and air gas purification industries. The return of income for AY 2014-15 was filed on 29.11.014 disclosing total income of Rs. 1,93,28,12,580/-. Against the said return of income, the assessment was completed by the DCIT, Corporate Circle 2(1). Kochi (hereinafter called "the AO") vide order dated 31.12.2016 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total income of Rs. 1,95,24,44,450/-. Subsequently, the AO formed opinion that income escaped assessment to tax for the reason that the DEPB income of Rs. 1,18,90,035/- was not brought to tax and the weighted deduction u/s. 35(2AB) was allowed without requisite certificate from DSIR. Accordingly, the AO issued a notice u/s. 148 of the Act and reopened the assessment. The assessment was completed vide order dated 14.12.2019 passed u/s. 143(3) r.w.s. 147 at a total income of Rs. 2,03,75,87,291/-. While doing so, the AO brought to tax the export incentive entitlement which is credited to the Profit & Loss A/c. but not offered to tax. The appellant company has been accounting the export incentive entitlement under various schemes

in the year of export following the mandatory accounting principles. However, for income tax purpose the export incentives were offered to tax on receipt basis. It is claimed that this method of accounting was continuously followed by the appellant. During the previous year relevant to the assessment year under consideration the total export incentive entitlement of Rs. 13,62,98,832/- have been accounted as income in the books of account but for income tax purpose the export incentive of Rs. 12,59,77,550/- received during the previous year relevant to assessment year under consideration was offered to tax. The AO was of the opinion that the export incentives are taxable on accrual based in view of the decision of Hon'ble Supreme Court in the case of Topman Exports v. CIT [2012] 342 ITR 49. Similarly, the AO was of the opinion that the weighted deduction under the provisions of section 35(2AB) is available only to the extent of the amount mentioned in the certificate issued in Form 3CL by DSIR. Accordingly, he disallowed an amount of Rs. 7,32,52,806/-.

5. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order set aside the issue of weighted deduction u/s. 35(2AB) to the file of the AO. However, confirmed the addition on account of DEPB income to the extent of Rs. 1, 18,90,035/-.

6. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

7. The learned counsel for the assessee submitted that the export incentives were offered to tax on receipt basis and this has continuously been followed by the assessee and, therefore, on the principle of consistency no addition is required to be made.

8. On the other hand, the learned Sr. DR submits that the export incentives are taxable on accrual basis as provisions of section 28(iiib) specifically provides that export incentives are taxable on accrual basis. The moment the appellant export goods the right had accrued as held by the Hon'ble Apex Court in the case of Topman Exports (supra).

9. We have heard the rival contentions and perused the material available on record. The issue in the present appeal relates to taxability of the export incentives on accrual basis or in the year of receipt. It is undisputed fact that the appellant had been following mercantile system of accounting. The moment the appellant export goods he is entitled to incentives. Even the accounting guidance note issued by ICAI also laid down that export incentives should be accounted in the books on accrual basis. The provisions of section 28(iiib) specifically provides that export cash assistance received by the assessee is taxable on accrual basis. Also the Hon'ble Apex Court in the case of Topman Exports (supra) laid down as under: -

> *"DEPB is a kind of assistance given by the Government of India to an exporter to pay customs duty on its imports and it is*

receivable once exports are made and an application is made by the exporter for the DEPB."

10. In view of the above discussion we are of the considered opinion that the export incentives are taxable on accrual basis. Appeal stands dismissed.

IT No. 1020/Coch/2024 – AY : 2018-19

11. The return of income for AY 201819 was filed on 30.11.2018 and the same was revised on 20.03.2019 at a total income of Rs. 198,54,47,950/-. Against the said return of income, the assessment was completed vide order dated 28.09.2021 passed u/s. 143(3) r.w.s. 144B of the Act at a total income of Rs. 212,67,71,870/-. While doing so, the AO made the following disallowances: -

1	Disallowance of Education cess u/s. 40(a)(ii)	Rs. 1,94,42,031/-
2	GSP paid in advance	Rs. 6,65,49,118/-
3	Duty Drawback	Rs. 3,76,00,382/-
4	Disallowance of royalty expenses in eligible units	Rs.1,02,32,391/-
5	Administrative expenses	Rs. 75,00,000/-
	Total	212,67,71,872/-

12. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order partly allowed the appeal deleting the addition on account of administrative expenses of Rs. 75,00,000/-

for the purpose of computing 80IA deduction. All other disallowances are upheld.

13. Being aggrieved, the appellant is in appeal before this Tribunal in the present appeal.

14. Ground of appeal No. 2 challenged the disallowance of GST paid on exports of Rs. 6,65,49,118/-. The factual backgrounds leading to the above addition is that during the previous year relevant to the assessment year under consideration the appellant company paid GST on exports made during the year. It is submitted that the appellant is entitled to refund of GST paid subject to fulfillment of certain conditions and therefore this was shown as refund on the asset side of the Balance Sheet. However, for tax purposes the same was claimed as deduction as per clause (a) of section 43B of the Act. It is submitted that GST amount paid in question is not collected from the customers to be remitted to the Government of India. It is tax neutral as the same was reversed on receipt of GST from customers and offered to tax. However, the AO rejecting the above contention merely made addition. On appeal before the learned CIT(A), the CIT(A) without giving any independent finding merely confirmed the addition.

15. We have carefully perused the submissions made and examined the nature of claim. From the assessee's submission, it is clear that the GST paid does not represent discharge of any liability.

The appellant is entitled to refund subject to fulfillment of certain conditions. The fact that the appellant is entitled for refund of GST paid would demonstrate the fact that GST paid was not discharge of any existing liabilities. It does not represent an expenditure and, therefore, the question of allowing the same as deduction does not arise. The provisions of section 43B have no application to the facts of the case as no liability got crystalised during the previous year relevant to the assessment year under consideration. Thus, this ground of appeal stands dismissed.

16. Ground of appeal No. 3 challenges hew addition on account of export incentives for the reasons stated by us in ITA No. 989/Coch.2024. This issue stands decided by us in assessee's appeal for AY 2014-15. The reasoning given by us equally good for this appeal also.

17. Ground of appeal No. 4 challenges payment of Royalty. The AO made disallowance of royalty expenditure on the ground that no payment was made. It is contended that the provision was made on the basis of sales made based on the agreement entered into with Midrex Technologies Inc. On a mere reading of the assessment order it would be evident that the AO had merely disallowed the claim for deduction under the provision for royalty only on the ground that no payment was made. It is undisputed fact that the appellant is following mercantile system of accounting and, therefore, the actual payments for royalty are irrelevant. The AO

only should examine the crystallization of liability during the previous year relevant to assessment year under consideration. Therefore, the matter is restored back to the file of the AO to examine the claim with reference to crystallization of liability. Accordingly, this ground stands partly allowed.

18. Ground of appeal No. 5 challenges allocation of administrative expenditure for the purpose of allowance of 80IA deduction. The facts leading to the above addition is that the appellant had setup Windmill in Vadodara in the year 2006-07. The electricity generated through the Windmill is supplied to the State Electricity Board through common grid. It is stated that separate books of account are maintained as required u/s. 80IA of the Act. All expenditure incurred directly and indirectly for generating income is accounted separately in the books. The requisite audit report in Form 10AB was also furnished. It is stated that no indirect expenses are incurred to earn income and, therefore, no allocation of expenditure is required to be made. However, the AO rejecting the above submissions, allocated administrative expenditure of Rs. 75,00,000/- while computing eligible profit u/s. 80IA of the Act. It is settled position of law that the essential expenditure proportionately incurred by a corporation should be taken into consideration for working out deduction u/s. 80IA of the Act. Reference to this can be made to the decision of the Hon'ble Calcutta High Court in the case of Tide Water Oil Co. (India) Ltd. v. CIT [2013] 35 taxmann.com

427. In view of this judgement we do not see any illegality or perversity in the order of the CIT(A). This ground stands dismissed.

19. In the result, the appeal filed by the assessee in ITA No. 898/Coch/2024 stands dismissed and ITA No. 1020/Coch/2024 stands partly allowed.

Order pronounced in the open court on 31st July, 2025.

Sd/-	Sd/-
(SONJOY SARMA)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Cochin, Dated: 31st July, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin